

REMARKS/ARGUMENTS

In response to the Office Action dated February 23, 2005 ("OA"), Applicants respectfully request the Office to enter the amendments set forth above and consider the following remarks. By this response, claims 3-5, 7-9, and 11 are amended, claims 1-2 are canceled without prejudice or disclaimer, and new claims 20-30 are added. Claims 12-19 were withdrawn in Applicants' previous response as being drawn to the non-elected invention. After entry of this paper, claims 3-11 and 20-30 will be pending in this application. Authorization is hereby given to charge any fees (e.g., extension fees) associated with this response to Deposit Account No. 50-1078.

In the Office action, the Examiner: (i) rejected claims 1-4, 8, and 9 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,804,141 to Chianese ("Chianese"); (ii) rejected claims 5-7 under 35 U.S.C. § 103(a) as being unpatentable over Chianese in view of U.S. Patent No. 6,489,171 to Aghassie et al. ("Aghassie"); rejected claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Chianese in view of U.S. Patent No. 6,409,832 to Weigl et al. ("Weigl"); and (iv) rejected claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Chianese in view of U.S. Patent No. 6,585,939 to Dapprich ("Dapprich").

35 U.S.C. § 102(b) Rejections

Claims 1-4, 8, and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Chianese.

Claims 1-2 are canceled without prejudice or disclaimer, and thus the rejection with respect to these claims is rendered moot.

Additionally, claim 4 has been amended to be dependent on claim 5, a claim which the Office has not rejected as anticipated by Chianese. Accordingly, the instant rejection under 35 U.S.C. § 102(b) with respect to claim 4 should be withdrawn. As set forth in connection with the obviousness discussion below, claim 4 is allowable for at least the same reasons as claim 5.

Claim 8 also stands rejected under 35 U.S.C. § 102(b). While Applicants disagree that claim 8 is anticipated, Applicants have amended this claim to further obviate this rejection. Furthermore, as an initial matter, Applicants respectfully note that the Office has not articulated any reasoning as to how this claim is anticipated, nor has the Office mapped the recitations of this claim to Chianese. Thus, if the unstated basis for the Office's rejection is not adequately addressed via the instant amendment to claim 8, Applicants respectfully submit that the rejection be fully articulated in a subsequent, non-final action.

Accordingly, here, Applicants have amended claim 8 to further clarify the basis for patentability over Chianese. Specifically, claim 8 has been amended to recite that the collapsor "comprises a singular member shaped as a blade, said member having a longitudinal axis oriented at an acute angle less than perpendicular to said pliable surface so that the blade is positioned at an acute angle of incidence with respect to the pliable surface as the member is driven across the cartridge to displace said biological fluid."

In contrast, the press described in Chianese is disclosed only as being a rolling device (as shown in the figures), a reciprocating compression platen, or a narrow slit through which the strip is fed. See, e.g., Chianese, col. 4, lines 56-67. These press-related structures disclosed in Chianese can, in no way, be argued to teach or suggest the blade-shaped member and related recitations, as now set forth in amended claim 8. Based on at least these recitations, then, Chianese does not anticipate claim 8. Accordingly, Applicants request that the rejection of claim 8 under 35 U.S.C. § 102(b) be withdrawn and the claim allowed.

The remainder of the claims subject to the instant rejection, claims 3 and 9, have been amended to be dependent on claim 8, and thus include all elements and recitations thereof. Accordingly, claims 3 and 9 are distinguishable from Chianese for at least the same reasons stated above with respect to claim 8. Applicant therefore requests that the rejection of claims 3 and 9 under 35 U.S.C. § 102(b) be withdrawn and the claims allowed.

35 U.S.C. § 103(a) Rejections

Claims 5-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chianese in view of Aghassie.

Applicants respectfully submit that the independent claims under rejection here, claims 5 and 7, as amended, are patentable over Chianese and Aghassie. The Office has alleged that Chianese fails to disclose the collapsor structures recited in claim 5 (collapsor surface having protrusions) and claim 7 (series of plungers), but that these features would have been obvious in view of Aghassie. Without acquiescing to the correctness of any aspect of these rejections, Applicants have amended claims 5 and 7 to more positively distinguish these collapsor features from the cited references.

With respect to claim 5, the Office has argued that "it would have been obvious to one having an ordinary skill in the art to modify the roller of Chianese to include protrusions to aid in applying positive pressure to the chamber to break the reagent capsules. However, the protrusions of the present invention are not directed to the functionality alleged by the Office, and claim 5 has been amended to clarify this distinction. Specifically, claim 5 has been amended to recite that the collapsor "comprises a collapsor surface with protrusions having predetermined spacing, said predetermined spacing creating corresponding concavities in said pliable surface as said collapsor collapses said pliable surface against said rigid core, displacement from said corresponding concavities thereby causing a predetermined amount of biological fluid to be delivered from the cartridge." Thus, Applicants submit that amended claim 5 is neither taught nor suggested by Aghassie. Applicants further submit that each and every one of the added recitations cannot be found in Chianese and Aghassie, as required to reject the claim under 35 U.S.C. § 103(a).

For at least the foregoing reasons, Chianese and Aghassie do not render claim 5 unpatentable. Accordingly, Applicants request that the rejection of claim 5 under 35 U.S.C. § 103(a) be withdrawn and the claim allowed. Claim 6 depends on claim 5 and therefore includes all elements and recitations thereof. Accordingly, claim 6 is distinguishable from Chianese and Aghassie for at least the same reasons as claim 5.

Applicants therefore request that the rejections of claim 6 under 35 U.S.C. § 103(a) be withdrawn and the claim allowed.

With respect to claim 7, the Office has argued that Aghassie teaches an injection system including a piston (at col. 7, lines 2-5), and that it would have been obvious both to modify Chianese to provide the piston of Aghassie "because it is known for pistons to impart positive forces on structures" and to include a plurality of pistons "in order to release multiple chemicals for testing. Again, however, the plungers of the present invention are not directed to the features and functionality described in the cited references, and claim 7 has been amended to clarify this distinction. Specifically, claim 7 has been amended to a collapsor comprising "a series of plungers, said plungers having a longitudinal axis oriented perpendicular to said pliable surface and said plungers are driven down onto said rigid core along said longitudinal axis such that valves in the cartridge can be opened or maintained in a closed position as a function of a sequence in which the plungers are driven." in contrast, the piston of Aghassie "contacts the container 19 **and ruptures the container** to release chemical [sic.] into injection port" (col. 7, lines 2-3). Thus, Aghassie completely breaks apart the container, rather than merely manipulating the pliable surface to open or close portions of the cartridge as a function of plunger sequence. Accordingly, Applicants submit that amended claim 7 is neither taught nor suggested by Aghassie. Applicants further submit that each and every one of the added recitations cannot be found in the cited references, as required to reject the claim under 35 U.S.C. § 103(a).

For at least the foregoing reasons, Chianese and Aghassie do not render claim 7 unpatentable. Therefore, Applicants request that the rejection of claim 7 under 35 U.S.C. § 103(a) be withdrawn and the claim allowed.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Chianese in view of Weigl. Further, claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Chianese in view of Dapprich.

Claims 10 and 11 have been amended to depend, indirectly, on independent claim 8, and thus include all the elements and recitations thereof. For the reasons stated above, claim 8 is patentable over Chianese. Moreover, Applicants respectfully

submit that the recitations of claim 8 and the distinguishing features noted above, also adequately define over Weigl and Dapprich. In other words, the deficiencies in Chianese noted above with respect to claim 8 are not cured by Weigl or Dapprich, either alone or in combination with Chianese. Accordingly, claim 10 is patentable over Chianese in view of Weigl and claim 11 is patentable over Chianese in view of Dapprich. Therefore, Applicants request that the rejection of claims 10 and 11 under 35 U.S.C. § 103(a) be withdrawn and the claims allowed.

Additionally, Applicants submit that new claims 20-30 do not raise new issues, present new matter or necessitate the undertaking of any additional search, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Thus, no new matter has been added by this response.


In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of the instant application in view of this response, and the timely allowance of the pending claims. Furthermore, the Examiner is urged to contact the undersigned at (650) 849-6643, if the Office believes that there are any outstanding issues suitable for being address via telephone .

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 50-1078.

Respectfully submitted,

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